

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOSE BRITO,

Plaintiff,

-against-

MARINA’S BAKERY CORP., et al.,

Defendants.

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**REPORT AND**  
**RECOMMENDATION**  
19 CV 828 (KAM) (CLP)

**POLLAK**, Chief United States Magistrate Judge:

On February 12, 2019, plaintiff Jose Brito filed a complaint against Marina’s Bakery Corp., Maragarito Gonzalez, and Sergio Gonzalez (collectively, “defendants”). Defendants appeared by counsel and filed an answer on March 12, 2019. On June 17, 2019, defendants’ counsel submitted a letter to the Court requesting to withdraw as counsel given the defendants’ lack of responsiveness. On June 18, 2019, the Court ordered defendants’ counsel to file a motion to withdraw pursuant to the Local Rules of the Eastern District of New York and provided defendants with time to file a response. (Electronic Order, dated June 18, 2019). On July 25, 2019, defendants’ counsel moved to withdraw. Following that motion, on August 9, 2019, defendants’ counsel alerted the court that he had been in contact with defendants and believed he could continue representation in this matter. (ECF No. 27). The case then continued to mediation.

On March 26, 2020, defendants’ counsel once again moved to withdraw. (ECF No. 32). Following a hearing on counsel’s motion to withdraw, the Court reserved decision and, on June 1, 2020, ordered counsel to submit a status letter to the Court by June 12, 2020. (ECF No. 33). The Court also ordered that defendants be given 60 days to find new counsel and scheduled a

hearing for August 25, 2020, at which defendants or their new counsel were ordered to appear. (Id.)

No new notice of appearance was filed by the end of August despite the Court's Order. The Court therefore ordered defendants to show cause why defendants' counsel's motion should not be granted. (ECF No. 39). The Court also Ordered new counsel to file a notice of appearance by September 14, 2020. (Id.) Again, no notice of appearance was filed. When neither new counsel nor defendants appeared at the subsequent conference on September 24, 2020, the Court granted defendants' counsel's motion to withdraw. (ECF No. 40). Defendants were given a final opportunity to find counsel within 14 days of the Court's Order, until October 12, 2020. (Id.)

When defendants failed to obtain new counsel by October 12, 2020, plaintiff's counsel moved for entry of a default. (ECF No. 42, dated October 13, 2020). Defendants have had almost eight months to find new counsel and been directed to do so on numerous occasions. They have failed to do so. Given that defendants have been given a sufficient amount of time to obtain new counsel, have neither obtained new counsel nor requested additional time, and have not contacted the Court since May 27, 2020, the Court respectfully recommends that a default enter against defendants unless they contact the Court by November 4, 2020.

Any objections to this Report and Recommendation must be filed with the Clerk of the Court within fourteen (14) days. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2); see also Fed. R. Civ. P. 6(a), (e) (providing the method for computing time). Failure to file objections within the specified time waives the right to appeal the District Court's order. See, e.g., Caidor v. Onondaga Cty., 517 F.3d 601, 604 (2d Cir. 2008) (explaining that "failure to object timely to a . . . report [and recommendation] operates as a waiver of any further judicial review of the

magistrate [judge's] decision”).

The Clerk is directed to send copies of this Order to the parties either electronically through the Electronic Case Filing (ECF) system or by mail.

**SO ORDERED.**

Dated: Brooklyn, New York  
October 21, 2020

/s/ Cheryl L. Pollak

Cheryl L. Pollak  
Chief United States Magistrate Judge  
Eastern District of New York